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IN THE

Supreme Court of the United States

No. 195 OCTOBER TERM, 1950

JAMES RUTKIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY BRIEF

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POINT I

The theory of law upon which the Solicitor General argues to sustain the conviction of petitioner is novel, has not been ruled upon in any prior decision of this Court and aside from what might be implied in the opinion of the Court of Appeals, below, there is no precedent in support thereof.

The Solicitor General argues, at page 12 of the Brief in Opposition, that the facts in this matter come within the rules of law as set forth by this Court in *North American Oil* v. *Burnet*, 286 U. S. 417 and *United States* v. *Lewis*,

340 U. S. 590, rehearing denied, 341 U. S. 923; and that the decision of this Court in the case of *Commissioner* v. *Wilcox*, 327 U. S. 404, is inapplicable.

It is submitted that the Government's argument does not follow through to substantiate its mentioned contention. In both cases of *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, this Court enunciated the rule that where a taxpayer received income under a bona fide claim of right he was required to make a return and pay tax. On the other hand, this Court in *Commissioner* v. *Wilcox*, *supra*, decided that funds received with no bona fide legal or equitable claim did not constitute returnable income.

If the petitioner herein had proved his contention that he was entitled to the payment as of right as his share of the proceeds of the sale of Browne-Vintners the case would have fallen within the rulings of *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, and the taxes having been paid the petitioner would have necessarily been acquitted. Since the jury voted for conviction, upon instructions to acquit or convict on the basis of a finding of extortion (see Point V, Petitioner's Brief annexed to Petition), there is implicit in their verdict a finding that the petitioner had no bona fide claim of right to the money he received from Reinfeld. Therefore, the rulings in *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, do not apply.

It is petitioner's contention that the rule of law set forth in *Commissioner* v. *Wilcox*, *supra*, does apply herein, inasmuch as the jury in its verdict found that he had obtained the money by extortion with no bona fide claim of right. The United States recognized the apparent inconsistency of its position here but attempts to resolve the dilemma by constructing a new rule of law which has not heretofore been decided.

The Solicitor General states at page 3 of his brief that the Government charged the payment in question was made as the result of extortion. Nevertheless, on page 15 of the Government's brief it is stated that there is a "middle ground" between the petitioner's rejected contention that he was entitled to the payment as of right and the case of securing money at gunpoint (extortion); the former payment being obtained under a bona fide claim of right and taxable, the latter payment being obtained without right and therefore non-taxable. This "middle ground" which Government seeks to assert is simply that where an individual asserts a claim, baseless in fact, and pursues this baseless claim so insistently and threateningly as to result in a decision by the victim to negotiate a settlement, payment made under such circumstances permits a jury to decide that such individual had a "claim" but that he had no "right."

The Government's argument attempts to follow the decision of the Court of Appeals wherein it was found that the petitioner had the "semblance of a bona fide claim of right" (opinion of Court of Appeals, p. 8). Thus, both the Government's Opposition Brief and the opinion of the Court of Appeals recognize that the jury could find no "bona fide claim of right" in convicting the petitioner. Such verdict should necessarily be reversed under the rule of *Commissioner* v. *Wilcox, supra.*

The Court of Appeals for the first time introduced the new theory that the "semblance of a bona fide claim of right" was equivalent to an actual bona fide claim of right and that since Reinfeld the "victim" never attempted to recover the money it constituted taxable income to the petitioner.

The crux of culpability for income tax evasion is whether the alleged evader *wilfully* evaded reporting and paying the alleged tax due. If the petitioner received this money on the theory of *any kind* of a claim of right that it was

his share of the sale of Browne-Vintners Co. with knowledge that the taxes on such fund were paid, the necessary wilfulness for conviction of tax evasion was lacking. If, on the other hand, the petitioner in his own mind knew he had a baseless claim and actually used threats to enforce such claim then it is a pure and simple matter of extortion and no bona fide claim of right or any "semblance" thereof can be substantiated.

It was argued in Point I of the brief annexed to the petition that monies obtained by extortion are received by the wrongdoer without a bona fide claim of right. The Government has failed to submit a single decided case against this contention or to support their proposition that one who enforces payment of a spurious claim by threats and show of force, receives such money with the "semblance of a bona fide claim of right"; nor has the Court below cited authority for its findings in this respect.

In furtherance of its theory of the case, the Court of Appeals below stated at page 7 of its opinion: "* * * Reinfeld, according to the record, never denied the presence of a claim of right by Rutkin to some money."

We respectfully, but strenuously, submit that this statement is absolutely without support in the record. Reinfeld consistently denied the presence of a claim of right by Rutkin. Although he testified to several claims or demands made by petitioner, throughout his testimony Reinfeld insisted that the said claims were not claims of right but were entirely spurious, and unwaveringly termed them as being baseless demands.

The Government argues in addition, that in the instant case, there was no definite unconditional obligation to repay or return the funds as there was in the *Wilcox* case. In support of this argument, the Government quotes from the opinion of the Court below as follows:

> "* * * there is not the slightest hint in the record that Rutkin ever had or has such obligation. Reinfeld, after agreeing to giving the $250,000.00, to Rutkin, did cause that sum to be turned over to him and took from him a general release. Reinfeld, the owner of the funds, participated in what he designates as their misappropriation by his own conscious acts. Obviously, as a result of that transaction, Rutkin at that time possessed a colorable claim of title to the money. This has never since been challenged. Reinfeld has unmistakably considered the $250,000.00, to be Rutkin's property. He has left Rutkin in undisputed possession of it for the last eight years and has permitted the statute of limitations to expire on whatever right he might have had to reclaim the money."

It is respectfully submitted that the very first sentence of this quotation indicates the point at which the Court of Appeals first fell into error. The question of whether or not Rutkin had a definite unconditional obligation to repay or return the funds is not to be found in the record, but in the legal principles applicable to the fact conclusions which the jury was obliged to reach in order to convict. More than 100 years ago, the Supreme Court of the United States said, "Where money is wrongfully and illegally exacted, it is received without any legal right or authority to receive it; and the law, at the very time of payment, creates obligation to refund it. A notice of intention to recover back the money does not, even in such cases, create the right to recover it back: that results from the illegal exaction of it, * * *." (*Bank of U. S.* v. *Bank of Washington*, 6 Pet. 6, 8 L. Ed. 299, 304.) In the accompanying note (starting at page 299 of the Law Ed.), the following language is particularly pertinent:

> "If one man has obtained money of another through the medium of oppression, * * * extortion * * *, such money is in contemplation of law, money

> received for the use of the injured party, it is not the money of the wrong-doer, and he has no right to retain it. The law implies a promise from him to return it to the rightful owner."

The above cited case was cited with approval in *Hartford-Empire Co.* v. *Shawkee Mfg. Co.*, 163 Fed. 2d 474, 3 Cir. (1947), in an opinion written by the same Judge who wrote the opinion in the Court of Appeals in the instant case.

The fact that Reinfeld had permitted Botkin to remain in undisputed possession of the money for eight years and had permitted the Statute of Limitations to expire on whatever right he might have had to reclaim the money did not alter the obligation of petitioner to return monies obtained by extortion. The duty to return the money paid is fixed by law absolutely and immediately upon the wrongdoer, and mere lapse of time, or lack of election on the part of the owner to recover the money, does not expunge this absolute duty to return the money. (*McKnight* v. *Commissioner of Internal Revenue*, 127 F. 2d 572, 573, 574; see also *Commissioner of Internal Revenue* v. *Turney*, 82 F. 2d 661, 662).

Neither the Government nor the Court of Appeals has cited a single authority for the proposition that a person who secures money by extortion is not under an unconditional obligation to repay or return the monies which he receives as the result of his unlawful acts. The unanimous weight of authority in this country indicates that a person who receives monies under the facts as contended by the Government, is under an unconditional obligation to repay or return the same. (70 C. J. S., p. 350, Sec. 146; *Miller* v. *Eisele*, 111 N. J. L. 268.)

The entire decision of the Court of Appeals below, sets a precedent which throws the rules already established by this Court into a state of confusion. Under the present decisions of this Court an alleged taxpayer may be classified as one who either has *no bona fide claim of right* to monies received or one who has *an actual bona fide claim of right* to

such monies. There is no middle ground. It is submitted that there can be no middle ground since a man either has or has not a bona fide claim of right to monies received. It must be one or the other, and it is certainly true that a claim of right can never been established, if it does not already exist, by the relentless assertion of a spurious claim accompanied by continuing threats of violence.

By the Government's own admission in its argument, a novel theory is presented herein, which is at odds with the existing state of the law as set down in the decisions of this Court, and it is submitted that this Court should grant certiorari herein.

POINT II

Assuming *arguendo* that the Government's theory of the rule of law applicable to the instant case is correct, the jury did not receive the case with proper instructions, and therefore their verdict should be reversed.

The trial Court below in its charge to the jury, as was argued in Point V of petitioner's brief annexed to petition, instructed them in such a manner as to leave them only the choice of acquittal if they found that petitioner was entitled to the fund as of right, or of guilt if they found that the payment was made as a result of extortion. On the basis of this charge, the petitioner could be acquitted only if the jury found he had a bona fide legal or equitable claim to the money and did not use threats to collect it. At no place in the charge of the trial Court was the jury instructed as to the legal eventualities present in the case if they should find that the petitioner had a "semblance of a bona fide legal or equitable claim."

Thus, the entire theory upon which the Government now relies to sustain the conviction was never presented to the jury, with proper instructions, to determine whether the facts in the case as found by them fitted into the "middle ground" theory of the Government. It is submitted that the petitioner's conviction must be reversed inasmuch as he was found guilty by the jury for tax evasion based upon obtaining money by a pure extortion.

The rules of law set down in *Commissioner* v. *Wilcox*, *supra*, require the reversal of such a verdict. On the other hand, if there is any merit to the Government's contention concerning their "middle ground" theory, it is submitted that this case should be reversed and remanded for a new trial with instructions that at such trial the jury be apprised of the pertinent rule of law involved.

In connection with the Court's Charge, in addition to the fact that the jury were not properly instructed, it is respectfully submitted that the final portion of the charge was highly prejudicial to the petitioner in that it contained a vast amount of irrelevant and immaterial matter which was of a highly inflammatory nature.

We refer to pages 933a-934a of the record wherein the trial Court charged as follows:

> "But as you do that you must remember the other party to the controversy, the United States of America. Now, the United States of America is not just some far off idea or some distant concept. The United States of America is you and I and about one hundred and forty-five or one hundred and fifty million of our fellow-citizens who are banded together under law, trying to live in peace and comity with ourselves and with the rest of the world; trying desperately to make this America what so many men have suffered and died to make it; the land where justice exists; the land where honesty and decency is represented; where we have selected the

government; *where we won't be governed by any supergovernment, by any deleterious influences*, but where we will be governed under our principles of freedom by the men and women that we select to govern us and that we hope will live up to the sacredness of their oath of service, although you have had a sample here where that is not quite true. But under God that is what we are aiming at. We are aiming at freedom and truth and justice.

And so the people of the United States have their rights too and those rights must be guarded just as jealously as the rights which you guard jealously for James Rutkin. The Government of the United States doesn't ask you to sacrifice anybody to prove its might. It asks you to do justice. That's all that Rutkin has a right to ask you to do, and that's what the Government of the United States asks you to do. *It asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government*; and that unpunished crime undermines our government. We all of us must do that which is our duty and do it without fear or favor. And so, keeping the balance between the two parties to this suit, the United States of America and James Ratkin, do justice between them. And I know of no better way in which to recall to you that which you must do than to recall the words of your oath, 'a true verdict to render according to the evidence, so help you God'. And if you do that, no one may quarrel with your verdict." (Italics ours.)

It is submitted that the petitioner was on trial for Income Tax evasion and for no other crime. The entire quoted portion of the Judge's charge tended to infer to the jury that here was the Government's opportunity to mete out punishment by means of this case for other matters not connected with the crime of Income Tax evasion. The trial Court specifically referred to the fact that "undetected crime" constituted a threat to the majesty and dignity of

the Government and that "we won't be governed by any supergovernment" or by any deleterious influences.

Inasmuch as the Government indicted the petitioner for Income Tax evasion, it cannot be said that the Court was referring to the charges of the indictment under which petitioner was tried, since, if the basis for these charges were undetected, there would have been no trial at all. The Court must have been referring either to the alleged extortion which was not a federal offense, or implying an innuendo that this petitioner was a part of some supergovernment which controlled the Government of the United States. Certainly these facts could have no bearing on the guilt or innocence of the petitioner to the specific charges alleged in the indictment and could only serve to prejudice him in the eyes of the jury.

The remarks of the Court were virtually an instruction to the jury to convict this petitioner, if not for Income Tax evasion, then for other offenses which the Government suspected but could not detect and punish.

CONCLUSION

For the reasons stated herein and in the brief of petitioner annexed to the petition, this Court should grant a writ of certiorari to the petitioner and, upon the appeal which shall be heard thereon, reverse petitioner's conviction.

Respectfully submitted,

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